

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: October 12, 2017

Agenda Item: Misner - Teton River Instream Flow Water Right Lease (R4)

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 5 Min

Background.

The lower Teton River historically supported a diverse fish community, but since the mid-1980s dewatering has increased with a corresponding loss of species diversity in the river. USGS streamflow data for Teton River at its mouth shows that the river was dry for the entire month of August in 10 of the last 19 years and the entire month of September in 9 of the last 19 years. Recently, and for the first time, the District Court appointed water Commissioners to distribute water from the entire Teton River and its tributaries, insuring that water users on the lower river will receive the water they are due.

On June 7th, the Commission directed FWP staff to negotiate a water-right leases for two water rights from the Teton subject to final Commission approval. On August 10th, the Commission approved the T&K Farms and Phillip and Peggy Johnson lease agreement covering part of the two water rights. The other co-owners of the two water rights, Howard E. Misner and Virginia Jamruszka-Misner, have now signed a lease agreement for their portion of the water rights. Like the recently approved leases on the Teton, the lease with the Misners is for 10 years at a cost of \$6 per acre-foot per year as measured at the historic point of diversion. The cost of the water Commissioner's charges will be subtracted from the annual payment to the lessors. The maximum annual cost is estimated to be \$1,300. The amount of water protected by this lease is estimated to be 1.5 cfs, but will ultimately be determined by DNRC.

Public Involvement Process & Results.

To change the lessors water rights to instream flow, FWP must make application to DNRC. This application would be noticed to the public, and potentially affected parties would have the opportunity to object to the change to instream flow. DNRC will also conduct an environmental review.

Alternatives and Analysis.

The No Action alternative would be for FWP to not lease the water rights and not change them to instream flow, whereby this opportunity for additional improvement to instream flow in the lower Teton River would be forgone. Another alternative would be for the water user to temporarily change the water right to instream flow without the involvement of FWP. This alternative would require the lessors to incur the legal and technical cost of pursuing the change to instream flow, for which they have limited incentive. It is unlikely the water user would pursue changes to instream flow for the benefit of the public fishery without FWP involvement.

Agency Recommendation & Rationale.

FWP recommends that the Commission approve the water-right lease agreement with Misners and direct FWP staff to file an application with DNRC to temporarily change the rights to instream flow.

Proposed Motion.

I move the Fish and Wildlife Commission approve the water-right lease with Howard E. Misner and Virginia Jamruszka-Misner and direct FWP staff to submit to DNRC an application to temporarily change the water rights to instream flows, as described in the lease agreement.